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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,291	07/21/2003	Brian Douglas	PDO-206	7388
7590	06/21/2004			
Siegmar Silber, Esq. SILBER & FRIDMAN 66 Mount Prospect Avenue Clifton, NJ 07013-1918			EXAMINER GERRITY, STEPHEN FRANCIS	
			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,291

Applicant(s)

DOUGLAS, BRIAN

Examiner

Stephen F. Gerrity

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/6/03</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Continuing Data Should Be Updated

1. Applicant is respectfully requested to carefully review all continuing data for accuracy and completeness, and the status of each parent application should be updated where appropriate.

Information Disclosure Statement

2. Receipt is acknowledged of an Information Disclosure Statement, filed 6 November 2003, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

Specification

3. The disclosure is objected to because of the following informalities: paragraphs 50 and 51 should be amended in the same manner as was required in the parent application 10/124,996. Appropriate correction is required.

Claim Objections

4. Claims 2-10 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 2-10 fail to further limit the subject matter of a

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previous claim because they each depend from claims which are not pending in this application. Correction is required.

5. Claims 1-3 are objected to because of the following informalities:

a. claim 1, lines 14, 18 and 22, the word "film" should perhaps be changed to --films--;

b. claim 2, line 4, it is suggested that the word --for-- be inserted after "station"; and

c. claim 3, line 3, the expression "5 mm." should be changed to --5 mm--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 28 and 29, the language "said zipper weld station longitudinally for transversely together the ends of said zipper ..." is awkward, confusing, and renders the claim

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vague and indefinite as the scope of the claim cannot be properly ascertained.

Claims 2-10 are vague and indefinite because they depend from claims which are not present in this application. It is assumed that the claims will be properly amended to depend directly or indirectly from claim 1.

Claim 3, the language "said packaging film at said impulse sealer ... above the level of said packaging film ..." is vague and indefinite because the claims recite a lower web of packaging film and an upper web of packaging film, which would require two packaging films. Therefore it is unclear from the claim as to which one or if both films are being referenced by the language of claim 3.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior

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art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Natterer (US 5,105,603) in view of Schwarzkopf (US 3,554,822).

The Natterer reference discloses: a zipper blank feed means (7, 8, 9), a sealing and channel-forming die assembly (13) with a heater (27) in the channel-forming die, and a zipper weld station (14); which meets all of applicant's claimed subject matter with the exception of the sealer (27) being an impulse sealer. The Schwarzkopf reference discloses that it is old and well known in the packaging art to use a pulse-heated heat sealer (12) to attach a fastener to the web -- the pulse-heated heat sealer is considered to be structurally equivalent to applicant's impulse sealer. It would have been obvious to a person having ordinary skill in the art, at the time applicant's invention was made, to have modified the Natterer packaging machine by having replaced the heat sealer (27) with the pulse-heated heat sealer of Schwarzkopf, in order to have a control over the operation -- see col. 2, line 48 through col. 3, line 48.

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Regarding the language in claim 1 that the apparatus is a conversion kit for "retrofitting a horizontal FFS packaging machine ..." and that the "conversion kit comprises ...", the examiner points out that it is old and well known in the packaging art, and for that matter most mechanical arts, to retrofit old and well known machines by modifying same to include different mechanical elements as improvements or upgrades -- see for instance, Runge (**US 5247781**) at col. 1, lines 60-66, "One consideration in providing for in-line attachment of fastener material to a web of film material is the compactness of the apparatus. The apparatus for attaching the fastener material is preferably adapted for retrofit installation in combination with existing form, fill, seal equipment, without unduly increasing the space requirements of the combined apparatus." Accordingly, as demonstrated by many of the references attached to this Office action, it is the nature of the now modified Natterer structure that it inherently possesses the characteristics of a conversion kit without actually being called a conversion kit. Hence, the above quoted language of claim 1 is met by the now modified Natterer structure.

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Regarding claims 9 and 10, the subject matter of these claims is met by the now modified Natterer structure.

Allowable Subject Matter

10. Claims 2-8 would be allowable if rewritten to overcome the objections and rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show packaging machines and retrofitting of machines. All are cited as being of interest and to show the state of the prior art.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Stephen F. Gerrity** whose telephone number is (703) 308-1279. The examiner can normally be reached on **Monday - Friday** from 5:30 - 2:00.

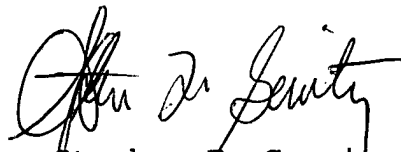
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Rinaldi Rada**, whose telephone number is (703) 308-2187, may be contacted.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the TC 3700 receptionist whose telephone number is (703) 308-1148.


Stephen F. Gerrity
Primary Examiner
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17 June 2004